

ASSEMBLY BILL

No. 801

Introduced by Assembly Member Brown

February 21, 2013

An act to amend Section 21608.5 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 801, as introduced, Brown. Junk dealers and recyclers: nonferrous materials.

Existing law requires junk dealers and recyclers, as defined, to maintain written records of all sales and purchases made in the course of their business, and makes a violation of the recordkeeping requirements a misdemeanor. Existing law prohibits a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by cash or check, the check is mailed or the cash or check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains a photograph or video of the seller and certain other identifying information, as specified, which information is to be retained by the dealer or recycler, as part of the written record of purchases, for a specified period of time.

This bill would require junk dealers and recyclers to obtain specified information before providing payment for nonferrous materials marked with an indicia of ownership, as defined, and would require that this information be retained as part of the written record of purchases. Because a violation of the recordkeeping requirement would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21608.5 of the Business and Professions

2 Code is amended to read:

3 21608.5. (a) A junk dealer or recycler in this state shall not
4 provide payment for nonferrous material unless, in addition to
5 meeting the written record requirements of Sections 21605 and
6 21606, all of the following requirements are met:

7 (1) The payment for the material is made by cash or check. The
8 check may be mailed to the seller at the address provided pursuant
9 to paragraph (3) or the cash or check may be collected by the seller
10 from the junk dealer or recycler on or after the third business day
11 after the date of sale.

12 (2) At the time of sale, the junk dealer or recycler obtains a clear
13 photograph or video of the seller.

14 (3) (A) Except as provided in subparagraph (B), the junk dealer
15 or recycler obtains a copy of the valid driver's license of the seller
16 containing a photograph and an address of the seller, a copy of a
17 state or federal government-issued identification card containing
18 a photograph and an address of the seller, a passport from any
19 other country in addition to another item of identification bearing
20 an address of the seller, or a Matricula Consular in addition to
21 another item of identification bearing an address of the seller.

22 (B) If the seller prefers to have the check for the material mailed
23 to an alternative address, other than a post office box, the junk
24 dealer or recycler shall obtain a copy of a driver's license or
25 identification card described in subparagraph (A), and a gas or
26 electric utility bill addressed to the seller at that alternative address
27 with a payment due date no more than two months prior to the
28 date of sale. For purposes of this paragraph, "alternative address"
29 means an address that is different from the address appearing on
30 the seller's driver's license or identification card.

1 (4) The junk dealer or recycler obtains a clear photograph or
2 video of the nonferrous material being purchased.

3 (5) The junk dealer or recycler shall preserve the information
4 obtained pursuant to this subdivision for a period of two years after
5 the date of sale.

6 (6) (A) The junk dealer or recycler obtains a thumbprint of the
7 seller, as prescribed by the Department of Justice. The junk dealer
8 or recycler shall keep this thumbprint with the information obtained
9 under this subdivision and shall preserve the thumbprint in either
10 hardcopy or electronic format for a period of two years after the
11 date of sale.

12 (B) Inspection or seizure of the thumbprint shall only be
13 performed by a peace officer acting within the scope of his or her
14 authority in response to a criminal search warrant signed by a
15 magistrate and served on the junk dealer or recycler by the peace
16 officer. Probable cause for the issuance of that warrant must be
17 based upon a theft specifically involving the transaction for which
18 the thumbprint was given.

19 (7) *If the materials are marked with an indicia of ownership,*
20 *the junk dealer or recycler obtains a proof of ownership record,*
21 *including, but not limited to, a receipt from the indicated owner*
22 *or a bill of lading, from the person selling or delivering the*
23 *materials that shows that person has lawful possession or*
24 *ownership of the materials. Copies of these documents shall be*
25 *maintained by the junk dealer or recycler as part of the written*
26 *record of the transaction.*

27 (b) Paragraph (1) of subdivision (a) shall not apply if, during
28 any three-month period commencing on or after the effective date
29 of this section, the junk dealer or recycler completes five or more
30 separate transactions per month, on five or more separate days per
31 month, with the seller and, in order for paragraph (1) of subdivision
32 (a) to continue to be inapplicable, the seller must continue to
33 complete five or more separate transactions per month with the
34 junk dealer or recycler.

35 (c) This section shall not apply if, on the date of sale, the junk
36 dealer or recycler has on file or receives all of the following
37 information:

38 (1) The name, physical business address, and business telephone
39 number of the seller's business.

(2) The business license number or tax identification number of the seller's business.

(3) A copy of the valid driver's license of the person delivering the nonferrous material on behalf of the seller to the junk dealer or the recycler.

(d) (1) This section shall not apply to the purchase of nonferrous material having a value of not more than twenty dollars (\$20) in a single transaction, when the majority of the transaction is for the redemption of beverage containers under the California Beverage Container Recycling and Litter Reduction Act, as set forth in Division 12.1 (commencing with Section 14500) of the Public Resources Code.

(2) Materials made of copper or copper alloys shall not be purchased under this subdivision.

(e) This section shall not apply to coin dealers or to automobile dismantlers, as defined in Section 220 of the Vehicle Code.

(f) For the purposes of this section, ~~“nonferrous”~~ *the following terms have the following meanings:*

(1) *“Indicia of ownership” means words, symbols, or registered trademarks printed, stamped, etched, attached, or otherwise displayed on the exterior surface of the materials that reasonably identify the owner.*

(2) *“Nonferrous material” means copper, copper alloys, stainless steel, or aluminum, but does not include beverage containers, as defined in Section 14505 of the Public Resources Code, that are subject to a redemption payment pursuant to Section 14560 of the Public Resources Code.*

(g) This section is intended to occupy the entire field of law related to junk dealer or recycler transactions involving nonferrous material. However, a city or county ordinance, or a city and county ordinance, relating to the subject matter of this section is not in conflict with this section if the ordinance is passed by a two-thirds vote and it can be demonstrated by clear and convincing evidence that the ordinance is both necessary and addresses a unique problem within and specific to the jurisdiction of the ordinance that cannot effectively be addressed under this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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